



**UNITED STATES DEPARTMENT OF COMMERCE**  
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APPLICATION NO. 08/928,272	FILING DATE 08/22/97	FIRST NAMED INVENTOR MILLER	ATTORNEY DOCKET NO. 08338/024003
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HM11/0624

EXAMINER TENG, S
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ART UNIT 1546	PAPER NUMBER
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DATE MAILED: 06/24/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

## Advisory Action

Application No.

08/920,272

Applicant(s)

Miller et al.

Examiner

Sally Teng

Group Art Unit

1646



### THE PERIOD FOR RESPONSE: [check only a) or b)]

- a) ☐ expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☒ Appellant's Brief is due two months from the date of the Notice of Appeal filed on Apr 19, 1999 (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on Jun 7, 1999 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

- ☒ The proposed amendment(s):

☐ will be entered upon filing of a Notice of Appeal and an Appeal Brief.

- ☒ will not be entered because:

- ☒ they raise new issues that would require further consideration and/or search. (See note below).
- ☐ they raise the issue of new matter. (See note below).
- ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
- ☒ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: The term "postnatal mammal" is vague and indefinite. Does the term include adult mammals? "Multipotent precursor cells" is a limitation that has not been considered for 112, 1st and 2nd and prior art rejections.

- ☐ Applicant's response has overcome the following rejection(s):

- ☐ Newly proposed or amended claims \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.
- ☒ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
for the reasons of record. Also, it is not clear that the isolated cells of Calof and Mayo are unipotent, as asserted by applicant.
- ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
- ☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: None

Claims objected to: 28

Claims rejected: 1-11 and 21-30

- ☐ The proposed drawing correction filed on \_\_\_\_\_ ☐ has ☐ has not been approved by the Examiner.

- ☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

- ☒ Other Claims 8 and 10 are directed to cells differentiated from the cells of claim 1, but are not directed to isolated multipotent precursor cells. It is also pointed out that the claims are directed to products; thus, the source of their origin is immaterial to patentability. Calof and Mayo discloses neurons which are cells differentiated from a multipotent precursor cell.

SALLY TENG  
PRIMARY EXAMINER